

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Dietz**

Serial No. **10/715,062**

Filed: **November 17, 2003**

For: **Dynamic Web Page Construction  
Based on Determination of Client  
Device Location**

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Group Art Unit: **3622**

Examiner: **Lastra, Daniel**

**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**35525**  
PATENT TRADEMARK OFFICE  
CUSTOMER NUMBER

**APPEAL BRIEF (37 C.F.R. 41.37)**

This brief is in furtherance of the Notice of Appeal, filed in this case on October 17, 2007.

A fee of \$510.00 is required for filing an Appeal Brief. Please charge this fee to IBM Corporation Deposit Account No. 09-0447. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

**REAL PARTY IN INTEREST**

The real party in interest in this appeal is the following party: International Business Machines Corporation of Armonk, New York.

### **RELATED APPEALS AND INTERFERENCES**

This appeal has no related proceedings or interferences.

## **STATUS OF CLAIMS**

### **A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

The claims in the application are: 1-22

### **B. STATUS OF ALL THE CLAIMS IN APPLICATION**

Claims canceled: 22

Claims withdrawn from consideration but not canceled: none

Claims pending: 1-21

Claims allowed: none

Claims rejected: 1-21

Claims objected to: none

### **C. CLAIMS ON APPEAL**

The claims on appeal are: 1-21

### **STATUS OF AMENDMENTS**

No amendment after final rejection was filed for this case.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

Generally, the present claims are directed to techniques for dynamically serving a given web page element, such as an advertisement, based on a location of the requesting client device – in effect, a location-specific dynamic page generator is provided since the present claimed features enables the *web server* to serve web pages that include given page content elements to the user based on the location of the *client machine*. Thus, for example, when a user in a given city makes a request for a web page, an advertisement targeted to the user can be sent to the client machine with the rest of the requested page elements as a result of such dynamic page generation. In contrast, the cited reference teaches a system that selectively retrieves canned, pre-existing data in a *mobile device* that is coupled to a server.

### **A. CLAIM 1 - INDEPENDENT**

The subject matter of Claim 1 is directed to a method for generating and serving a web page by a server data processing system (Specification page 5, lines 3-7; page 17, lines 12-16). A set of location-specific page elements are stored (Specification page 5, lines 10-11; Specification page 12, lines 13-17). A request for the web page is received from a first client browser, and the request includes a geographic location data string identifying a first location of the first client browser (Specification page 5, lines 12-14; page 12, lines 9-13; page 13, lines 7-21; Figure 3, block 48). In response to the request being received, the web page is dynamically built using the geographic location data string to select a given one of the set of location-specific page elements having content associated with a physical location in proximity to the first location of the first client browser (Specification page 5, lines 17-21; page 14, lines 8-22; Figure 3, blocks 54-64). This web page is served in response to the request (Specification page 5, line 21; page 14, lines 22-23; Figure 3, block 66). A subsequent request for the web page is received from either the first client browser or a second client browser (Specification page 21, lines 24-25). A determination is made as to whether the subsequent request originates from a second location that is proximate to the first location of the first client browser (Specification page 22, lines 1-4). If the second location is proximate to the first location, a cached version of the web page with the selected location-specific page element is provided (Specification page 22, lines 4-7).

## **B. CLAIM 5 - INDEPENDENT**

The subject matter of Claim 5 is directed to a method for generating and serving a web page by a server data processing system (Specification page 5, lines 3-7). A set of location-specific page elements are stored (Specification page 5, lines 10-11; Specification page 12, lines 13-17). A request for the web page is received from a first client browser, and the request includes a geographic location data string identifying a first location of the first client browser (Specification page 5, lines 12-14; page 12, lines 9-13; page 13, lines 7-21; Figure 3, block 48). In response to the request being received, the web page is dynamically built using the geographic location data string to select a given one of the set of location-specific page elements having content associated with a physical location in proximity to the first location of the first client browser (Specification page 5, lines 17-21; page 14, lines 8-22; Figure 3, blocks 54-64). This web page is served in response to the request (Specification page 5, line 21; page 14, lines 22-23; Figure 3, block 66). A subsequent request for the web page is received from either the first client browser or a second client browser (Specification page 21, lines 24-25). A determination is made as to whether the subsequent request originates from a second location that is proximate to the first location of the first client browser (Specification page 22, lines 1-4). If the second location is proximate to the first location, a cached version of the web page with the selected location-specific page element is provided (Specification page 22, lines 4-7), where the first client browser provides the geographic location data string in a cookie (Specification page 18, lines 21-24 and page 19, lines 5-9).

## **C. CLAIM 6 - INDEPENDENT**

The subject matter of Claim 6 is directed to a method for generating and serving a web page by a server data processing system (Specification page 5, lines 3-7). A set of location-specific page elements are stored (Specification page 5, lines 10-11; Specification page 12, lines 13-17). A request for the web page is received from a first client browser, and the request includes a geographic location data string identifying a first location of the first client browser (Specification page 5, lines 12-14; page 12, lines 9-13; page 13, lines 7-21; Figure 3, block 48). In response to the request being received, the web page is dynamically built using the geographic location data string to select a given one of the set of location-specific page elements having content associated with a physical location in proximity to the first location of the first client

browser (Specification page 5, lines 17-21; page 14, lines 8-22; Figure 3, blocks 54-64). This web page is served in response to the request (Specification page 5, line 21; page 14, lines 22-23; Figure 3, block 66). A subsequent request for the web page is received from either the first client browser or a second client browser (Specification page 21, lines 24-25). A determination is made as to whether the subsequent request originates from a second location that is proximate to the first location of the first client browser (Specification page 22, lines 1-4). If the second location is proximate to the first location, a cached version of the web page with the selected location-specific page element is provided (Specification page 22, lines 4-7), where the first client browser provides the geographic location data string in an HTML form (Specification page 19, lines 11-13).

#### **D. CLAIM 7 - INDEPENDENT**

The subject matter of Claim 7 is directed to a method for generating and serving a web page by a server data processing system (Specification page 5, lines 3-7). A set of location-specific page elements are stored (Specification page 5, lines 10-11; Specification page 12, lines 13-17). A request for the web page is received from a first client browser, and the request includes a geographic location data string identifying a first location of the first client browser (Specification page 5, lines 12-14; page 12, lines 9-13; page 13, lines 7-21; Figure 3, block 48). In response to the request being received, the web page is dynamically built using the geographic location data string to select a given one of the set of location-specific page elements having content associated with a physical location in proximity to the first location of the first client browser (Specification page 5, lines 17-21; page 14, lines 8-22; Figure 3, blocks 54-64). This web page is served in response to the request (Specification page 5, line 21; page 14, lines 22-23; Figure 3, block 66). A subsequent request for the web page is received from either the first client browser or a second client browser (Specification page 21, lines 24-25). A determination is made as to whether the subsequent request originates from a second location that is proximate to the first location of the first client browser (Specification page 22, lines 1-4). If the second location is proximate to the first location, a cached version of the web page with the selected



location-specific page element is provided (Specification page 22, lines 4-7), wherein the set of location-specific page elements are stored at a third party server (Specification page 12, lines 15-17).

#### **E. CLAIM 9 - INDEPENDENT**

The subject matter of Claim 9 is directed to a computer program product for serving a web page (page 20, lines 9-24). The computer program product includes means for receiving, by a server data processing system, a request for the web page from a first client browser, where the request includes a geographic location data string identifying a first location of the first client browser (Specification page 5, lines 12-14; page 12, lines 9-13; page 13, lines 7-21; Figure 3, block 48). The computer program product also includes means for dynamically building, by the server data processing system, the web page using the geographic location data string to select a given one of a set of location-specific page elements having content including a physical location in proximity to the first location of the first client browser (Specification page 5, lines 17-21; page 14, lines 8-22; Figure 3, blocks 54-64). The computer program product also includes means for receiving, by the server data processing system, a subsequent request for the web page from either the first client browser or a second client browser different from the first client browser (Specification page 21, lines 24-25). The computer program product also includes means for determining, by the server data processing system, if the subsequent request originates from a second location that is proximate to the first location of the first client browser and if so a cached version of the web page with the selected location-specific page element is provided (Specification page 22, lines 1-7).

The structure/material/acts that correspond to the means for receiving a request, dynamically building, receiving a subsequent request, determining and providing are set forth in Figure 1, 'Server' and Figure 2, all elements as described in the Specification at page 10, line 11 – page 11, line 6.

#### **F. CLAIM 15 - INDEPENDENT**

The subject matter of Claim 15 is directed to a web server (Specification page 10, lines 11-20; Figure 1, 'Server'). The web server includes means for receiving a request for the web page from a first client browser, where the request includes a geographic location data string identifying a first location of the first client browser (Specification page 5, lines 12-14; page 12, lines 9-13; page 13, lines 7-21; Figure 3, block 48). The web server also includes means, responsive to the request, for dynamically building the web page using the geographic location data string to select a given one of a set of location-specific page elements having content including a physical location in proximity to the first location of the first client browser (Specification page 5, lines 17-21; page 14, lines 8-22; Figure 3, blocks 54-64). The web server also includes means for receiving a subsequent request for the web page from either the first client browser or a second client browser different from the first client browser (Specification page 21, lines 24-25). The web server also includes means for determining if the subsequent request originates from a second location that is proximate to the first location of the first client browser, and if so a cached version of the web page with the selected location-specific page element is provided (Specification page 22, lines 1-7).

The structure/material/acts that correspond to the means for receiving a request, dynamically building, receiving a subsequent request, determining and providing are set forth in Figure 1, 'Server' and Figure 2, all elements as described in the Specification at page 10, line 11 – page 11, line 6.

#### **G. CLAIM 21 - INDEPENDENT**

The subject matter of Claim 21 is directed to a method for building and serving a web page by a server data processing system (Specification page 5, lines 3-7; page 17, lines 12-16). A first request for the web page is received from a client browser, with the request being associated with a geographic location data string identifying a location of the client browser (Specification page 5, lines 12-14; page 12, lines 9-13; page 13, lines 7-21; Figure 3, block 48). In response to the first request being received, the web page is dynamically using the geographic location data string to select a given location-specific page element (Specification page 5, lines 17-21; page 14, lines 8-22; Figure 3, blocks 54-64). The web page is cached for future use (Specification page 21, lines 21-24). The web page is served in response to the first request (Specification page 5,

line 21; page 14, lines 22-23; Figure 3, block 66). In response to receipt of a second request for the web page, a determination is made as to whether the second request originates within a given distance from the location and if so, the cached web page is retrieved and served (Specification page 22, lines 1-7).

## **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The grounds of rejection to review on appeal are as follows:

### **A. GROUND OF REJECTION 1**

Whether Claims 1-7, 9-13, 15-19 and 21 fail to be anticipated under 35 U.S.C. § 102(e) by Dowling (US 6,522,875).

### **B. GROUND OF REJECTION 2**

Whether the Examiner failed to state a *prima facie* obviousness rejection under 35 U.S.C. § 103 against Claims 8, 14 and 20 in view of Dowling (US 6,522,875).

## ARGUMENT

### **A. GROUND OF REJECTION 1 (Claims 1-7, 9-13, 15-19 and 21)**

Claims 1-7, 9-13, 15-19 and 21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Dowling (U.S. Patent No. 6,522,875). This rejection is respectfully traversed.

For a prior art reference to anticipate in terms of 35 U.S.C. 102, *every element* of the claimed invention must be *identically shown* in a single reference. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990) (emphasis added by Appellant). Appellant will now show that every element recited in each of these Claims 1-7, 9-13, 15-19 and 21 is not identically shown in a single reference, and therefore these claims are not anticipated by the cited reference.

#### **A.1. Claims 1-4, 9-13 and 16-19**

Generally speaking, Claim 1 (and similarly for Claims 2-4, 10-13, 15, 17-19 and 21) is directed to a technique for the dynamic building of a web page based upon a geographic location of a device. While it may be true that the teachings of the cited reference are similarly directed to providing ‘localized’ content, *how such localized content is provided* is substantially different from *how* the content is provided per the features of the present claims. In general, per the present claims, *content for a web page is dynamically generated* based on the location information, whereas per the teachings of the cited reference *pre-existing web pages are selected* based on location information. For example, the cited reference does not teach any type of *dynamic web page generation based on location information that is received in a request for a web page*, but instead teaches the filtering of pre-existing content based upon location. By analogy, and as will become apparent from the detailed discussion below, the teachings of Dowling are akin to a cable TV distribution system, where a multitude of pre-existing channels and associated programming are provided on a communication link such as a coaxial cable or satellite channel (akin to the Dowling local broadcast domain, where a multitude/plurality of items are indiscriminately broadcast over a local/short-range network), and a cable box or tuner is used to selectively pass a given channel from the plurality of broadcast channels to a receiver/TV (akin to the Dowling packet filter and filter mask) for viewing by a user based upon their user selection (akin to the user location) – i.e. a push-based system. In contrast, and by the same analogy, the present disclosure is akin to a customized

program being dynamically created (akin to the claimed 'dynamically building the web page') and presented to the user based upon their user selection (akin to the claimed 'request for the web page') – i.e. a pull-based system.

In addition, *how the location information* (which is used to select content) *is ascertained* is also different between what is claimed and what is taught by the teachings of the cited reference, as will also be described in the detailed discussion below.

Specifically with respect to Claim 1, such claim recites steps of (i) receiving a request for the web page from a first client browser, the *request including a geographic location data string* identifying a first location of the first client browser, (ii) *dynamically building the web page using the geographic location data string* to select a given one of the set of location-specific page elements having content associated with a physical location in proximity to the first location of the first client browser, and (iii) serving the web page in response to the request. As can be seen, a request for a web page is received from a client browser, and this request for a web page includes a geographic location data string that identifies a location of the client browser. In rejecting both the 'receiving' and 'dynamically building' steps, the Examiner cites Dowling's teaching at col. 4, lines 45-65 as teaching both of these claimed steps (receiving; dynamically building), as well as teaching the claimed geographic location identifier. Appellant shows that there, Dowling states:

"The mobile unit is thereby able to navigate the Internet based on the mobile unit's geographical position in addition to prior art methods employing mouse and keyboard inputs. When a virtual connection is being used, GPS information need only be transmitted at pre-specified intervals or upon the detection of pre-specified events. For example, a filter is preferably employed to cause the network connection to only be activated when the mobile unit enters a locality associated with a web site of interest. For example, a hungry user entering a new city is interested in seeing web pages for local restaurants. Based upon the GPS position indication a list of restaurants in surrounding localities is downloaded into a memory of the mobile unit. When the GPS receiver indicates the mobile unit is in a designated locality, web pages for those restaurants in the local area are downloaded or retrieved from memory and displayed. The present invention provides a means for a user to "surf the web" or otherwise navigate a network application program based on

geographically related information such as locally broadcast packets and GPS information. One or more filter parameters are used to screen information of interest to a user.”

As can be seen, while local content is provided to a user based on GPS information, filters are used to screen or filter *pre-existing web pages*. This filtering of pre-existing web-pages based on location is further described at col. 10, lines 10-39, where it states:

“The output of the packet filter is coupled to the network interface module 205. The output of the packet filter includes any broadcast-data packet that passes through the packet filter. The packet filter output is then used to control information flow on the first network connection 112. For example, the vehicle 102 has recently entered a new city at lunchtime and the user input-output module is manipulated by a user to navigate to a web page for restaurants. This may be done using standard techniques by entering a network address such as a URL, by entering keywords into a search engine or by clicking upon a bookmark in a web browser display. When the user connects to the web page for restaurants, a packet filter mask is downloaded from the web page for restaurants and loaded into the packet filter. Next the network connection is placed in an inactive state whereby the restaurant page is displayed with no physical network connection being needed. The restaurant web page is displayed until the vehicle enters the range of the local broadcast domain entity 150 which broadcasts possibly a complete packet stream comprising a plurality of different types of broadcast-data packets. Only the broadcast-data packets relating to restaurants are allowed to pass through the packet filter 225. These data packets are then passed to the network interface module 205 which sends one or more application request packets to the network server 125. The network server 125 then preferably downloads a set of web pages containing the menus and other information related to the restaurants associated with the received broadcast-data packets. This downloading occurs over the network connection antenna 110.”  
(emphasis added by Appellant)

As can be seen, there is no server-based dynamic custom generation of a particular web page based on user location, but instead a local filtering of broadcast data packets, with the data packets that pass through such filter being used to request traditional, pre-existing web-pages. This local filtering is accomplished by receiving all local content that is available from a local broadcast domain, using a filter to only allow certain of the available content to pass through the filter (based on a filter mask), transmitting requests for the content that passed through the filter (which are traditional web page requests with no location identifiers), and then receiving the requested, pre-existing content. In effect, per the teachings of the cited reference, all localized data packets (such as URLs) are transmitted during an indiscriminate broadcasting of such data packets and received when a vehicle comes within range of a local broadcast domain, and only the data packets/URLs of interest to the user, such as a restaurant(s) URL, are passed through the filter where a traditional request for web content using such URL is transmitted over another network (network L1 using antenna 110 of Figure 2). Because the cited reference does not teach the dynamic building of a web page based on location – and Claim 1 expressly recites ‘dynamically building the web page using the geographic location data string’ – it is shown that every element recited in Claim 1 is not identically shown in a single reference, and thus Claim 1 has been erroneously rejected under 35 U.S.C. § 102 (e).

In addition, and as mentioned in the opening summary comments, how the location information is ascertained is also different between what is claimed and what is taught by the cited reference. In particular, per Claim 1, a request for a web page is received from a browser, and this actual ‘request for the web page’ itself contains the location identifier (per Claim 1, “receiving a request for the web page from a first client browser, the request including a geographic location data string identifying a first location of the first client browser”). The cited Dowling reference does not teach this location identifier claimed feature. Instead, Dowling teaches two techniques that are used to ascertain a user’s physical location. In the first instance, a non-GPS technique is used whereby low-power transmitters are used to transmit what local content is available (if subsequently requested), and if the user is able to receive this low-power transmission the user is assumed to be in close proximity to the low-power transmitter (Dowling col. 4, lines 7-18; col. 6, lines 48-65) – hence the location is deduced based upon the user successfully receiving a low-power, localized broadcast transmission. Importantly, and as described by Dowling at col. 4, lines 15-19, in this mode of operation:



“Instead of the user needing to click upon a hyperlink to access a web site, a packet filter is configured to selectively pass packets according to a predefined criterion. When a packet passes through the packet filter, a web site is automatically accessed.”

Thus, in this ‘local broadcast detection’ mode of operation, requests for pre-existing content is automatically filtered, where the pre-existing content associated with the packets that pass through the filter is retrieved and presented to a user without user input. Thus, this non-GPS mode of operation does not teach the claimed feature of “receiving a *request* for the web page *from a first client browser*, the *request including a geographic location data string* identifying a first location of the first client browser”, since the user does not request anything in this mode of operation.

Dowling also describes a GPS mode of operation, but this is also described as being different from what is recited in Claim 1. Specifically, in Dowling’s GPS mode, GPS location information is *periodically transmitted* to a server, as described by Dowling at col. 4, lines 37-42:

“Periodically, processed GPS information may be transmitted via the mobile network connection to the network server. When this processed GPS information is received, the network server is operative to control the flow of information to the mobile unit based upon the processed GPS information.”

This periodic transmission of GPS information does not teach (or otherwise suggest) the claimed feature of “receiving a *request* for the web page *from a first client browser*, the *request including a geographic location data string* identifying a first location of the first client browser” for several reasons. First, Dowling teaches that the GPS information is sent periodically and is not described as being a part of any request for a web page. The only actions that are described by Dowling based on a user request are at col. 10, lines 15-32, where it states:

“For example, the vehicle 102 has recently entered a new city at lunchtime and the user input-output module is manipulated by a user to navigate to a web page for restaurants. This may be done using standard techniques by entering a network

address such as a URL, by entering keywords into a search engine or by clicking upon a bookmark in a web browser display. When the user connects to the web page for restaurants, a packet filter mask is downloaded from the web page for restaurants and loaded into the packet filter. Next the network connection is placed in an inactive state whereby the restaurant page is displayed with no physical network connection being needed. The restaurant web page is displayed until the vehicle enters the range of the local broadcast domain entity 150 which broadcasts possibly a complete packet stream comprising a plurality of different types of broadcast-data packets. Only the broadcast-data packets relating to restaurants are allowed to pass through the packet filter 225.”

As can be seen, the user input used to navigate to a web page is done *using traditional techniques*, and this user input results in a packet filter mask being downloaded so that it can be used by the packet filter to filter the multitude of broadcast packets that are received for all local content that is available. There is no mention that such user input or request *itself* includes any type of locator information, and in fact there would be no need to include such locator information since the location information is obtained using the two other techniques previously described hereinabove.

Second, this Dowling GPS location information is not received from a client *browser*, but instead is received from a client *GPS device* (Dowling col. 4, lines 31-38). In contrast, per Claim 1, such claim recites “*receiving a request for the web page from a first client browser*”. This aspect of Claim 1 advantageously allows for the *browser itself* to facilitate the providing of the location information, thereby enabling a plurality of different ways for the actual transport of location information with the request (as per several dependent claimed features, as further discussed below).

Thus, there are additional claimed features that are not identically shown in the cited Dowling reference, and in particular *how the location information is ascertained at the server* is different between what is claimed and what is taught by the cited reference.

## A.2. Claim 5

Appellant initially shows error in the rejection of Claim 5 for reasons given above with respect to Claim 1 (as Claim 5 includes all features of Claim 1).

Further with respect to Claim 5, it is urged that the cited reference does not teach the claimed feature of “wherein the first client browser provides the geographic location data string in a cookie”. In rejecting this aspect of Claim 5, the Examiner states that this geographic location data string provision by a cookie is taught by Dowling at col. 4, lines 45-65 in that Dowling describes use of a packet filter. Appellant respectfully submits that the Dowling packet filter is not used to provide location information that is received from a client browser, but instead is used to filter out received broadcast packets at the client device itself (Dowling col. 8, lines 59-62 and col. 9, line 41 – col. 10, line 39). While the purpose of this filtering by the packet filter is to provide local information, this filtering is done based upon whether the plurality of received broadcast data packets matches a downloadable mask (col. 9, lines 54-56). This packet filter has no knowledge of any type of location information, and thus has no way to provide location information *that is received from a client browser as a part of a request for a web page*. Thus, it is further urged that Claim 5 has been erroneously rejected under 35 U.S.C. § 102 (e).

Even assuming *arguendo* that the Dowling packet filter is used to provide location information that is received *from* a client browser, this Dowling packet filter is not equivalent to the claimed cookie. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). This means that the words of the claim must be given their **plain meaning** unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (discussed below); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004) (Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are **construed to mean exactly what they say**. Thus, “heating the resulting batter-coated dough to a temperature in the range of about 400°F to 850°F” required heating the dough, rather than the air inside an oven, to the specified temperature.) MPEP 2111.01(I) (emphasis added by Appellant). The Examiner is not interpreting the claim terms in

accordance with their normal, plain meaning<sup>1</sup>. Thus, it is further urged that Claim 5 has been erroneously rejected under 35 U.S.C. § 102 (e), as every element recited therein is not identically shown in a single reference.

### A.3. Claim 6

Appellant initially shows error in the rejection of Claim 6 for reasons given above with respect to Claim 1 (as Claim 6 includes all features of Claim 1).

Further with respect to Claim 6, it is urged that the cited reference does not teach the claimed feature of “wherein the first client browser *provides the geographic location data string in an HTML form*” (emphasis added). In rejecting Claim 6, the Examiner states that Dowling teaches such claimed feature at col. 13, lines 25-40. Appellant urges that there, Dowling states:

“Application data is transmitted as application data packets using an application layer protocol such as HTTP. The application data is preferably downloaded from the network server 125 into the mobile unit 105 and then displayed on the user input-output device 210. Typically, the network application data involves web pages provided in hypertext mark-up language (HTML) but other forms of network application data may be equivalently used. In many cases, the network application data includes a packet-filter parameter. In some embodiments, to limit airtime, the first step 305 accesses the set of network application data from a memory or other form of storage unit accessible to the mobile unit 105. Control next passes to a second step 310 whereby information related to the network application data is displayed. In a preferred embodiment, the second step 310 involves displaying a web page on a web browser display screen that is a part of the user input-output device 210.”

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<sup>1</sup> HTTP cookies, sometimes known as web cookies or just cookies, are parcels of text sent by a server to a web browser and then sent back unchanged by the browser each time it accesses that server. HTTP cookies are used for authenticating, tracking, and maintaining specific information about users, such as site preferences or the contents of their electronic shopping carts. The term “cookie” is derived from “magic cookie,” a well-known concept in UNIX computing which inspired both the idea and the name of HTTP cookies. Source: <http://www.wikipedia.org>

While this cited passage generally mentions ‘HTML’, the use of HTML that is described is very different from what is recited in Claim 6. Specifically, Claim 6 (in combination with independent Claim 1) recites that the HTML form is used to provide the geographic location data string that is received from the browser. In contrast, the HTML as described by Dowling is merely a traditional use of HTML that is used to format data that is downloaded to a mobile unit for display to a user. Thus, the direction of data flow is diametrically opposed. Still further, the cited passage does not teach the *particular use* of HTML that is recited in Claim 6. Specifically, this cited passage does not describe that the *HTML is used to provide a geographic data string*, as per the particular features of Claim 6 in combination with Claim 1. Thus, it is further urged that Claim 6 has been erroneously rejected under 35 U.S.C. § 102 (e), as every element recited therein is not identically shown in a single reference.

#### **A.4. Claim 7**

Appellant initially shows error in the rejection of Claim 7 for reasons given above with respect to Claim 1 (as Claim 7 includes all features of Claim 1).

Further with respect to Claim 7, such claim recites “wherein the set of location-specific page elements are stored at a third party server”. As can be seen, the set of location-specific page elements are stored at a third party server – with this set of location-specific page elements that are stored at a third party server being used in dynamically building the web page that is served to the user. In rejecting Claim 7, the Examiner states that Dowling teaches such third party server storage of the location-specific page elements at Dowling Figure 1, item 120. Appellant respectfully urges that, to the contrary, Dowling’s item 120 is used to maintain a network connection between a mobile unit and an air interface (Dowling col. 6, lines 11-15), and this network connection or virtual session server is not described as being used to store any type of information used to dynamically generate content that is served to a user, as per the particular features of Claim 7 in combination with Claim 1. Thus, it is further urged that Claim 7 has been erroneously rejected under 35 U.S.C. § 102 (e), as every element recited therein is not identically shown in a single reference.

#### **A.5. Claim 15**

Appellant initially shows error in the rejection of Claim 15 for substantially the same reasons as those given above with respect to Claim 1.

Further with respect to Claim 15, it is urged that the cited reference does not teach a single unitary web server having all of the specifically recited (i) means for receiving a request, (ii) means for dynamically building, (iii) means for receiving a subsequent request, (iv) means for determining and (v) means for providing, as per Claim 15. The Examiner has failed to establish, or even allege, any such teaching of such a unitary *web server*. The reference itself does not teach such a unitary web server. For example, the alleged packet filtering is performed by a packet filter and control module 225 (Figure 2), which is part of a mobile unit 105 (Figure 1), whereas the server functionality of Dowling is provided by elements 120, 125 and 135 of Figure 1.

Thus, it is further shown that Claim 15 is not anticipated by the cited reference, as every element recited therein is not identically shown in a single reference.

#### **A.6. Claim 21**

Appellant initially shows error in the rejection of Claim 21 for substantially the same reasons given above with respect to Claim 1 (which includes substantially the same features as Claim 1).

Further with respect to Claim 21, such claim requires that all of the recited steps are performed by a *server data processing system*. The Examiner has failed to establish, or even allege, any such teaching of such a server data processing system. The reference itself does not teach such a server data processing system. For example, the alleged packet filtering is performed by a packet filter and control module 225 (Figure 2), which is part of a mobile unit 105 (Figure 1), whereas the server functionality of Dowling is provided by elements 120, 125 and 135 of Figure 1.

Thus, it is further shown that Claim 21 is not anticipated by the cited reference, as every element recited therein is not identically shown in a single reference.

#### **B. GROUND OF REJECTION 2 (Claims 8, 14 and 20)**

Claims 8, 14 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dowling (U.S. Patent No. 6,522,875).

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. *Id.*

To establish prima facie obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. MPEP 2143.03. *See also, In re Royka*, 490 F.2d 580 (C.C.P.A. 1974).

If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

#### **B.1. Claims 8, 14 and 20**

Appellant initially urges error in the rejection of Claims 8, 14 and 20 for similar reasons to those given above with respect to Claim 1, as the additional Official Notice assertion that is alleged in the rejection of Claims 8, 14 and 20 does not overcome the teaching deficiencies identified above with respect to Claim 1.

Another issue with respect to the rejection of Claims 8, 14 and 20 is whether the Examiner has properly made a prima facie showing of obviousness, as the Examiner merely asserts that the missing claimed feature of Claim 8 is *old and well known*. This is erroneous, as it (i) does not take into account the KSR requirements<sup>2</sup>, and (ii) even if ‘well known’ were the proper test for an obviousness rejection, what’s well-known *today* was not necessarily well known *at the time this application was filed*. For example, the effective filing date of this

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<sup>2</sup> *KSR Int'l Co. v. Teleflex Inc.*, *supra*.

application is September 30, 1999 (over *eight (8) years ago*), and internet-related art has been changing very rapidly due to its ubiquitous nature and relatively new technology.

Thus, it is further urged that such ‘well-known’ assertion of obviousness does not meet today’s prima facie obviousness requirements, as described above.

### **C. CONCLUSION**

As shown above, the Examiner has failed to state valid rejections against any of the pending claims. Therefore, Appellant requests that the Board of Patent Appeals and Interferences reverse the rejections of such claims. Additionally, Appellant requests that the Board direct the Examiner to allow these pending claims.

/Wayne P. Bailey/

Wayne P. Bailey

Reg. No. 34,289

**YEE & ASSOCIATES, P.C.**

PO Box 802333

Dallas, TX 75380

(972) 385-8777



## **CLAIMS APPENDIX**

The text of the claims involved in the appeal is as follows:

1. A method for generating and serving a web page by a server data processing system, comprising the steps performed by the server data processing system of:
  - storing a set of location-specific page elements;
  - receiving a request for the web page from a first client browser, the request including a geographic location data string identifying a first location of the first client browser;
  - responsive to the request being received, dynamically building the web page using the geographic location data string to select a given one of the set of location-specific page elements having content associated with a physical location in proximity to the first location of the first client browser;
  - serving the web page in response to the request;
  - receiving a subsequent request for the web page from either the first client browser or a second client browser different from the first client browser;
  - determining if the subsequent request originates from a second location that is proximate to the first location of the first client browser; and
  - providing a cached version of the web page with the selected location-specific page element if the second location is proximate to the first location.
  
2. The method as described in Claim 1 wherein the geographic location data string is provided by a Global Positioning System (GPS) device coupled to a client computer in which the first client browser is resident.

3. The method as described in Claim 1 wherein the location-specific page elements are a set of web page advertisements.

4. The method as described in Claim 3 wherein the given one of the set of location-specific page elements is a web page advertisement for a business located in proximity to the location of the first client browser.

5. A method for serving a web page, comprising the steps of:

- storing a set of location-specific page elements;
- receiving a request for the web page from a first client browser, the request including a geographic location data string identifying a first location of the first client browser;
- dynamically building the web page using the geographic location data string to select a given one of the set of location-specific page elements having content associated with a physical location in proximity to the first location of the first client browser;
- serving the web page in response to the request;
- receiving a subsequent request for the web page from either the first client browser or a second client browser different from the first client browser;
- determining if the subsequent request originates from a second location that is proximate to the first location of the first client browser; and
- providing a cached version of the web page with the selected location-specific page element if the second location is proximate to the first location, wherein the first client browser provides the geographic location data string in a cookie.

6. A method for serving a web page, comprising the steps of:

- storing a set of location-specific page elements;
- receiving a request for the web page from a first client browser, the request including a geographic location data string identifying a first location of the first client browser;
- dynamically building the web page using the geographic location data string to select a given one of the set of location-specific page elements having content associated with a physical location in proximity to the first location of the first client browser;
- serving the web page in response to the request;
- receiving a subsequent request for the web page from either the first client browser or a second client browser different from the first client browser;
- determining if the subsequent request originates from a second location that is proximate to the first location of the first client browser; and
- providing a cached version of the web page with the selected location-specific page element if the second location is proximate to the first location, wherein the first client browser provides the geographic location data string in an HTML form.

7. A method for serving a web page, comprising the steps of:

- storing a set of location-specific page elements;
- receiving a request for the web page from a first client browser, the request including a geographic location data string identifying a first location of the first client browser;
- dynamically building the web page using the geographic location data string to select a given one of the set of location-specific page elements having content associated with a physical location in proximity to the first location of the first client browser;

serving the web page in response to the request;

receiving a subsequent request for the web page from either the first client browser or a second client browser different from the first client browser;

determining if the subsequent request originates from a second location that is proximate to the first location of the first client browser; and

providing a cached version of the web page with the selected location-specific page element if the second location is proximate to the first location, wherein the set of location-specific page elements are stored at a third party server.

8. The method as described in Claim 1 wherein the web page is built using a Java server page mechanism.

9. A computer program product in a computer-readable medium for serving a web page, comprising:

means for receiving, by a server data processing system, a request for the web page from a first client browser, the request including a geographic location data string identifying a first location of the first client browser;

means, responsive to the request, for dynamically building, by the server data processing system, the web page using the geographic location data string to select a given one of a set of location-specific page elements having content including a physical location in proximity to the first location of the first client browser;

means for receiving, by the server data processing system, a subsequent request for the web page from either the first client browser or a second client browser different from the first client browser;

means for determining, by the server data processing system, if the subsequent request originates from a second location that is proximate to the first location of the first client browser; and

means for providing, by the server data processing system, a cached version of the web page with the selected location-specific page element if the second location is proximate to the first location.

10. The computer program product as described in Claim 9 further including means for serving the web page in response to the request.

11. The computer program product as described in Claim 9 wherein the geographic location data string is provided by a Global Positioning System (GPS) device coupled to a client computer in which the first client browser is resident.

12. The computer program product as described in Claim 9 wherein the location-specific page elements are a set of web page advertisements.

13. The computer program product as described in Claim 9 wherein the given one of the set of location-specific page elements is a web page advertisement for a business located in proximity to the location of the first client browser.

14. The computer program product as described in Claim 9 wherein the means responsive to the request for dynamically building the web page is a Java server page mechanism.

15. A web server, comprising:

means for receiving a request for the web page from a first client browser, the request including a geographic location data string identifying a first location of the first client browser;

means, responsive to the request, for dynamically building the web page using the geographic location data string to select a given one of a set of location-specific page elements having content including a physical location in proximity to the first location of the first client browser;

means for receiving a subsequent request for the web page from either the first client browser or a second client browser different from the first client browser;

means for determining if the subsequent request originates from a second location that is proximate to the first location of the first client browser; and

means for providing a cached version of the web page with the selected location-specific page element if the second location is proximate to the first location.

16. The web server as described in Claim 15 further including means for serving the web page in response to the request.

17. The web server as described in Claim 15 wherein the geographic location data string is provided by a Global Positioning System (GPS) device coupled to a client computer in which the first client browser is resident.

18. The web server as described in Claim 15 wherein the location-specific page elements are a set of web page advertisements.

19. The web server as described in Claim 18 wherein the given one of the set of location-specific page elements is a web page advertisement for a business located in proximity to the location of the first client browser.

20. The web server as described in Claim 15 wherein the means responsive to the request for dynamically building the web page is a Java server page mechanism.

21. A method for building and serving a web page by a server data processing system, comprising steps implemented by the server data processing system of:

receiving a first request for the web page from a client browser, the request being associated with a geographic location data string identifying a location of the client browser;

responsive to the first request being received, dynamically building the web page using the geographic location data string to select a given location-specific page element;

caching the web page for future use;

serving the web page in response to the first request;

responsive to receipt of a second request for the web page, determining whether the second request originates within a given distance from the location; and

if so, retrieving and serving the cached web page in response to the second request.



## **EVIDENCE APPENDIX**

This appeal brief presents no additional evidence.

## **RELATED PROCEEDINGS APPENDIX**

This appeal has no related proceedings.